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NO. 216
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**In the Supreme Court of
the United States**

OCTOBER TERM, 1941

A. W. STICKLE & COMPANY, a Corporation,
Petitioner,

VERSUS

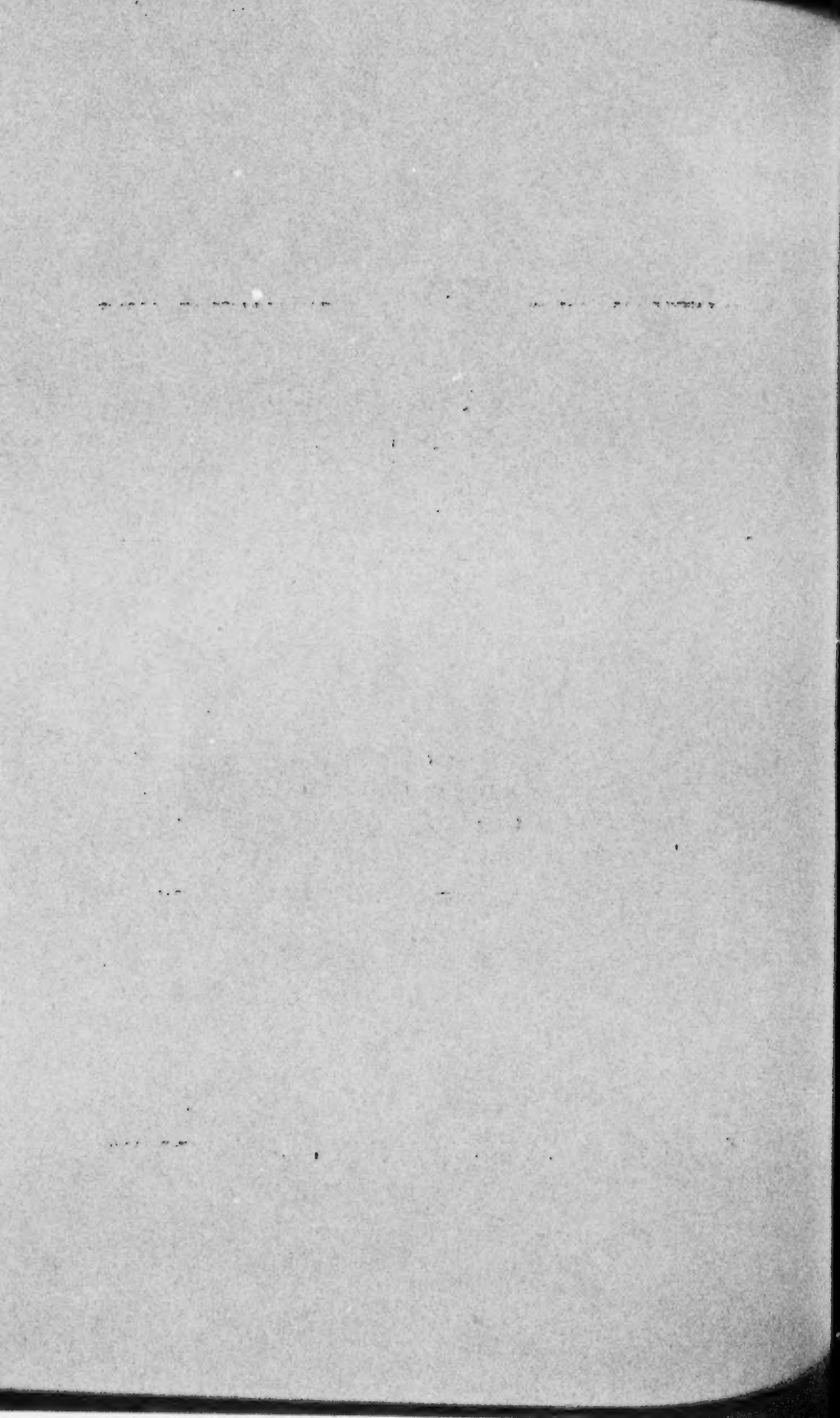
INTERSTATE COMMERCE COMMISSION,
Respondent.

**PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE TENTH CIRCUIT, AND SUPPORTING
BRIEF**

JOHN B. DUDLEY,
DUKE DUVALL,

Counsel for Petitioner.

July, 1942.



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Point II. The Circuit Court of Appeals has decided a federal question in a way probably in conflict with applicable decisions of this Court, because it has construed the Act in such a way as to convert

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S. 570, 69 L. ed. 445, 45 S. Ct. 191, 36 A. L. R. 1105.6, 15

Smith v. Cahoon (1921), 283 U. S. 553, 75 L. ed. 1264, 51
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STATUTES CITED

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TEXT BOOKS CITED

Craig Contract Carrier Application, 28 M. C. C. 629, 631 14

Nov., 1941 issue, Vol. 9, No. 2, p. 119, I. C. C. Practition-
ers' Journal, "Common, Contract, and Private Motor
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**PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
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TO THE HONORABLE SUPREME COURT OF THE UNITED STATES:

The petitioner, A. W. Stickle & Company, a corporation,
respectfully shows:

**A SUMMARY STATEMENT OF THE
MATTER INVOLVED**

The decisions below were based upon undisputed facts, consisting largely of two stipulations (R. 59, 85). The matter involved is purely one of construction of the Federal Motor Carrier Act of 1935, as amended (Interstate Commerce Act, Part II, Sections 201-227, 49 U. S. C. A. 301-327 (49 Statutes 543, *et seq.*, amended 54 Statutes 919),¹

1. Referred to herein as the Act.

and particularly the classification of carriers for hire and private carriers under the definitions therein.

Petitioner is a small Oklahoma corporation chartered as a lumber dealer (R. 63), both wholesale and retail, and conducting only a wholesale business. It purchases lumber from the mills in Arkansas and Texas and sells to lumber dealers in several states, the majority of all lumber handled being sold to dealers in Oklahoma at points throughout the State (R. 60).

All transactions conducted by petitioner are in lumber of which petitioner is the owner. In the conduct of its business, petitioner operates ten or twelve trucks for the purpose of transporting lumber which it purchases from the mills to its retail dealer customers. It owns all lumber which it transports (R. 62), and will not haul for anyone else (R. 112).

In the sale price, petitioner includes a charge for transportation commensurate with the expense thereof. So that a dealer located on the western side of Oklahoma, four hundred miles from the mill, would pay a higher price for the same lumber than a dealer situated near the Arkansas line and only one hundred miles from the mill area.

This is a critical fact in the case, because respondent contends it makes the operations those of a carrier for hire.

Petitioner has no certificate or other authority from the Interstate Commerce Commission to conduct such opera-

tions, and contends it is a private carrier in interstate commerce, and under the Act none is required.

Respondent instituted this action in the District Court for the Eastern District of Oklahoma to enjoin petitioner's operations until a certificate of authority had been obtained from the Interstate Commerce Commission to operate as a carrier for hire, upon the ground that such operations were not those of a private carrier and were being conducted in violation of the Act.

DECISIONS BELOW

The trial court granted the injunction (R. 95), and held petitioner to be a *common* carrier for hire (R. 94). The opinion is reported in 41 Fed. Supp. 268.

The Tenth Circuit Court of Appeals affirmed (Judge HUXMAN, dissenting), but held that petitioner was a *contract* carrier for hire, without mentioning the trial court's determination of its operations being those of a common carrier (R. 165). Opinion not yet officially reported.

JURISDICTION

The date of the decision and judgment of the United States Circuit Court of Appeals for the Tenth Circuit sought to be reviewed is May 1, 1942 (R. 165, 177). Petition for rehearing was filed May 29, 1942, and order denying the petition was entered June 5, 1942 (R. 180).

The jurisdiction of this Court is invoked under Section 240 of the Judicial Code, as amended (43 Statutes, 938, 28 U. S. C. A. 347).

QUESTIONS PRESENTED

The sole issue is whether petitioner is a private carrier by motor vehicle in interstate commerce, or is a carrier for hire, under the classifications as defined in Section 203 (a) of the Act (49 Statutes 543, as amended 54 Statutes 919, 49 U. S. C. A. 303 (a)).²

The questions presented are:

(1) Under the definition of the Act, is not an individual a private carrier where he neither transports nor holds himself out to transport property for the public nor

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2. Section 203 (a) (14), (15), (16), and (17) of the Interstate Commerce Act provide:

“(14) The term ‘common carrier by motor vehicle’ means any person which holds itself out to the general public to engage in the transportation by motor vehicle in interstate or foreign commerce of passengers or property or any class or classes thereof for compensation, whether over regular or irregular routes, except transportation by motor vehicle by an express company to the extent that such transportation has heretofore been subject to Part I, to which extent such transportation shall continue to be considered to be and shall be regulated as transportation subject to Part I.

“(15) The term ‘contract carrier by motor vehicle’ means any person which, under individual contracts or agreements, engages in the transportation (other than transportation referred to in paragraph (14) and the

for any third person, and hauls only property which he owns and for the purpose of sale, even though the sale price of the property so transported includes a charge for transportation?

(2) Do the provisions of the Act prevent one from being a private carrier in the transportation of his own goods by motor truck, because the sale price of such goods is higher at points more distant from the place of origin than those nearer it on account of the extra transportation expense?

(3) Are not the words "for compensation," as used in the definitions of the classes of carriers in the Act, synonymous with "for hire"?

(4) Would not the Act be unconstitutional in violation of the Due Process Clause of the Fifth Amendment if the definitions of the types of carriers in the Act do not

exception therein) by motor vehicle of passengers or property in interstate or foreign commerce for compensation.

"(16) The term 'motor carrier' includes both a common carrier by motor vehicle and a contract carrier by motor vehicle.

"(17) The term 'private carrier of property by motor vehicle' means any person not included in the terms 'common carrier by motor vehicle' or 'contract carrier by motor vehicle', 'who or which transports in interstate or foreign commerce by motor vehicle property of which such person is the owner, lessee, or bailee, when such transportation is for the purpose of sale, lease, rent or bailment, or in furtherance of any commercial enterprise.'"

mean that one transporting his own goods for the purpose of sale is a private carrier, notwithstanding the fact that he makes a charge in the sale price commensurate with the distance the goods are transported?

REASONS RELIED ON FOR ALLOWANCE OF WRIT

The reasons upon which petitioner relies for the allowance of the writ are as follows:

(1) The Circuit Court of Appeals has decided an important question of federal law which has not been but should be settled by this Court. This is a case of first impression, being the first case involving a construction of the definitions of the three types of motor carriers classified in Part II of the Interstate Commerce Act.

(2) The Circuit Court of Appeals has decided a federal question in a way probably in conflict with the applicable decisions of this Court on statutory construction, because it has construed the Act in such a way as to convert a private carrier into a carrier for hire, which would make the Act unconstitutional in that respect as being in violation of the Due Process Clause of the Fifth Amendment to the Constitution.

Michigan Public Utilities Commission v. Duke
(1925), 266 U. S. 570, 69 L. ed. 445, 45 S. Ct.
191, 36 A. L. R. 1105.

Frost & Frost Trucking Company v. Railroad
Commission (1926), 271 U. S. 583, 70 L. ed.
1101, 46 S. Ct. 605, 47 A. L. R. 457.

Smith v. Cahoon (1921), 283 U. S. 553, 75 L. ed.
1264, 51 S. Ct. 582.

(3) The questions presented are of great public importance because they involve the most vital feature of the Act, namely, the definitions of the classes of carriers to whom the Act applies, and the consequent regulations and provisions of the Act with which a particular individual must comply. Of special importance is the fixing of the line of demarcation between those falling into the classes of carriers for hire, with the stringent regulations justified through their character as public utilities, and those who fall into the class of private carriers, with the privilege of operating as a matter of right and subject only to slight regulations primarily in the interest of public safety. Constitutional rights are concerned, because if the definitions contained in the Act have the effect of converting by legislative fiat the operations of one who is a private carrier into those of a carrier for hire, such would amount to the deprivation of property without due process of law.

(4) The questions involved, determined by the courts below, have wide-spread significance and effect, particularly to dealers in lumber, coal and other bulky, low-value products, for the reason that they will be forced, if the decision below is correct, to abandon transportation of their own goods and compelled to use the services of carriers for hire, or will be driven to the alternative of engaging in the business of a carrier for hire and withdrawing from the business in which they are now engaged.

Wherefore, petitioner respectfully prays that a writ of certiorari may be issued out of and under the Seal of this Honorable Court, directed to the United States Circuit

Court of Appeals for the Tenth Circuit, commanding that Court to certify and to send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket: No. 2410, A. W. Stickle & Company, a corporation, Appellant, vs. Interstate Commerce Commission, Appellee; and that the said judgment of the Circuit Court may be reversed by this Honorable Court, and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem mete and just; and your petitioner will ever pray.

JOHN B. DUDLEY,
DUKE DUVALL,

Counsel for Petitioner.

July, 1942.

